



Senate

General Assembly

File No. 185

January Session, 2013

Substitute Senate Bill No. 829

Senate, March 27, 2013

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 51-88 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) [A] Unless a person is providing legal services pursuant to
4 statute or rule of the superior court, a person who has not been
5 admitted as an attorney under the provisions of section 51-80 or,
6 having been admitted under section 51-80, has been disqualified from
7 the practice of law due to resignation, disbarment, being placed on
8 inactive status or suspension, shall not: (1) Practice law or appear as an
9 attorney-at-law for another [.] in any court of record in this state, (2)
10 make it a business to practice law [.] or appear as an attorney-at-law
11 for another in any such court, (3) make it a business to solicit
12 employment for an attorney-at-law, (4) hold himself or herself out to
13 the public as being entitled to practice law, (5) assume to be an
14 attorney-at-law, (6) assume, use or advertise the title of lawyer,
15 attorney and counselor-at-law, attorney-at-law, counselor-at-law,

16 attorney, counselor, attorney and counselor, or an equivalent term, in
17 such manner as to convey the impression that he or she is a legal
18 practitioner of law, [or] (7) advertise that he or she, either alone or with
19 others, owns, conducts or maintains a law office, or office or place of
20 business of any kind for the practice of law, or (8) otherwise engage in
21 the practice of law as defined by statute or rule of the superior court.

22 (b) (1) Any person who violates any provision of this section shall
23 be guilty of a class D felony, except that in any prosecution under this
24 section, if the defendant proves by a preponderance of the evidence
25 that the defendant committed the proscribed act or acts while admitted
26 to practice law before the highest court of original jurisdiction in any
27 state, the District of Columbia, the Commonwealth of Puerto Rico or a
28 territory of the United States or in a district court of the United States
29 and while a member in good standing of such bar, such defendant
30 shall be guilty of a class C misdemeanor. No person whose admission
31 to practice law under the provisions of section 51-80, or whose
32 admission or permission to practice law pursuant to any other statute
33 or rule of the superior court has been suspended, solely on the basis of
34 the failure to pay the occupational tax on attorneys imposed pursuant
35 to section 51-81b or the client security fund fee assessed pursuant to
36 section 51-81d shall be subject to prosecution under this section for
37 engaging in the practice of law during the period of such suspension.

38 (2) The provisions of subdivision (1) of this subsection shall not
39 apply to any employee in this state of a stock or nonstock corporation,
40 partnership, limited liability company or other business entity who,
41 within the scope of his or her employment, renders legal advice to his
42 or her employer or its corporate affiliate and who is admitted to
43 practice law before the highest court of original jurisdiction in any
44 state, the District of Columbia, the Commonwealth of Puerto Rico or a
45 territory of the United States, a foreign jurisdiction as permitted by
46 rule of the superior court or in a district court of the United States and
47 is a member in good standing of such bar. For the purposes of this
48 [subsection] subdivision, "employee" means any person engaged in
49 service to an employer in the business of his or her employer, but does

50 not include an independent contractor.

51 (3) In any prosecution under section 53a-8 for soliciting, requesting,
52 commanding, importuning or intentionally aiding in the violation of
53 this section, and in any prosecution under section 53a-48 for
54 conspiracy to violate this section, the state shall have the burden of
55 proving beyond a reasonable doubt that the defendant had actual
56 knowledge that the person was not admitted to practice law in any
57 jurisdiction at the time such violation occurred.

58 (c) Any person who violates any provision of this section shall be
59 deemed in contempt of court, and the Superior Court shall have
60 jurisdiction in equity upon the petition of any member of the bar of
61 this state in good standing or upon its own motion to restrain such
62 violation.

63 (d) The provisions of this section shall not be construed as
64 prohibiting: (1) A town clerk from preparing or drawing deeds,
65 mortgages, releases, certificates of change of name and trade name
66 certificates which are to be recorded or filed in the town clerk's office
67 in the town in which the town clerk holds office; (2) any person from
68 practicing law or pleading at the bar of any court of this state in his or
69 her own cause; (3) any person from acting as an agent or
70 representative for a party in an international arbitration, as defined in
71 subsection (3) of section 50a-101; or (4) any attorney admitted to
72 practice law in any other state or the District of Columbia from
73 practicing law in relation to an impeachment proceeding pursuant to
74 Article Ninth of the Connecticut Constitution, including an
75 impeachment inquiry or investigation, if the attorney is retained by (A)
76 the General Assembly, the House of Representatives, the Senate, a
77 committee of the House of Representatives or the Senate, or the
78 presiding officer at a Senate trial, or (B) an officer subject to
79 impeachment pursuant to said Article Ninth.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	51-88
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JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Judicial Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Municipal Impact: None

Explanation

The bill makes changes to statute regarding the unauthorized practice of law and results in a potential minimal revenue gain. To the extent that the bill increases the likelihood that offenders would be prosecuted or receive harsher penalties than under current law, this bill may result in a potential minimal revenue gain.

The bill expands the prohibition to include additional categories and also increases the penalty of the unauthorized practice of law. There have been 86 violations of this statute in the past 10 years. Of these, 74 cases were dismissed and 11 resulted in a plea bargain. There have been no convictions of this statute to date.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Judicial Department Offenses and Revenue Database

OLR Bill Analysis**sSB 829*****AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW.*****SUMMARY:**

This bill generally increases the penalty for the unauthorized practice of law. But the current penalty continues to apply to people admitted as attorneys in other jurisdictions who practice in Connecticut without being authorized to do so.

The bill expands the list of people covered by the unauthorized practice statute, as well as those exempt from it. For example, the bill explicitly exempts someone who is not a Connecticut attorney but who is otherwise permitted to practice here by law or court rules.

The bill adds to the prohibition on unauthorized practice Connecticut attorneys who are then disqualified from practicing for various reasons. But it exempts from prosecution someone suspended from practice solely for failure to pay the attorney occupational tax or client security fund fee and who practices law during that suspension.

The bill provides that, in addition to the activities prohibited by the current unauthorized practice statute (see BACKGROUND), the prohibition also applies to otherwise engaging in the practice of law as defined by statute or Superior Court rules.

The bill also provides that in any prosecution for soliciting, requesting, commanding, importuning, or intentionally aiding in the unauthorized practice of law, or in any prosecution for conspiracy to engage in the unauthorized practice of law, the state must prove, beyond a reasonable doubt, that the defendant knew that the person was not admitted to practice law in any jurisdiction when the violation occurred.

EFFECTIVE DATE: October 1, 2013

UNAUTHORIZED PRACTICE OF LAW

Penalties and Exemptions

The bill generally increases the penalty for the unauthorized practice of law from a class C misdemeanor to a class D felony, which is punishable by up to five years in prison, up to a \$5,000 fine, or both. A class C misdemeanor is punishable by up to three months in prison, up to a \$500 fine, or both.

Under existing law, someone who violates the unauthorized practice statute is also deemed to be in contempt of court, and the court has equitable jurisdiction to restrain violations (i.e., order the person to stop the violation). With the possible exception noted below, these provisions continue to apply under the bill.

Others Authorized by Statute or Court Rule. The bill creates an explicit exemption to the ban on unauthorized practice for people authorized to provide legal services under a statute or Superior Court rule. Such people are exempt from all of the penalties specified above.

Court rules allow attorneys from other jurisdictions to provide legal services here under certain conditions without admission to the state bar. These include attorneys practicing “pro hac vice” (for this occasion only), authorized house counsel, and foreign legal consultants (Ct. Practice Book §§ 2-15A et seq.).

Other Attorneys. The bill keeps the current penalties for a defendant who is not authorized to practice here, as specified above, but who proves, by a preponderance of the evidence, that he or she committed the unlawful acts while an admitted member of good standing of the bar of (1) another state, (2) the District of Columbia, (3) Puerto Rico, (4) a U.S. territory, or (5) a U.S. district court.

Under existing law, the misdemeanor penalty does not apply to attorneys who (1) are admitted members in good standing of the bar of any of the above specified jurisdictions and (2) within the scope of

their employment, give legal advice to the employer or its corporate affiliate. But such people are still deemed in contempt of court and the court can restrain their violation of the statute.

The bill expands this exemption to include someone admitted in good standing to a foreign bar as permitted by Superior Court rules and who meets the other requirements set forth above. Also, such people from any of the above-specified jurisdictions would be exempt from all penalties under the statute if they were authorized house counsel or otherwise permitted by law or court rules to practice here.

Connecticut Attorneys Who are Later Disqualified. The bill includes within the prohibition on unauthorized practice someone who was admitted to the Connecticut bar but is later disqualified from practicing due to resignation, disbarment, suspension, or being placed on inactive status.

Under the bill, someone suspended solely for failure to pay the attorney occupational tax or client security fund fee required by law, and who practices law during that suspension, is exempt from prosecution. It is unclear if the person is also exempt from being held in contempt. Presumably, the court would have jurisdiction to restrain him or her from further violations of the statute.

BACKGROUND

Unauthorized Practice of Law

Subject to the exceptions noted above, existing law prohibits anyone not admitted to the Connecticut bar from:

1. practicing law or appearing as an attorney for anyone else in any court in Connecticut;
2. making it a business to practice law or appear as an attorney for anyone else in any such court;
3. making it a business to solicit employment as an attorney;
4. holding oneself out to the public as being entitled to practice

law;

5. assuming the role of an attorney;
6. assuming, using, or advertising the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in a manner suggesting that he or she is a legal practitioner of law; and
7. advertising that he or she, either alone or with others, owns, conducts, or maintains a place of business of any kind for the practice of law.

Related Bill

HB 5513, reported favorably by the Judiciary Committee, extends the penalties for the unauthorized practice of law to notaries public who are not attorneys and who commit certain acts regarding immigration matters or advertising.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 1 (03/13/2013)